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In re Application of : DECISION ON
Christiaan CARBON :
Application No.: 10/578,621 :
PCT No.: PCT/IB2004/003637 :
Int. Filing Date: 29 September 2004 : PETITION UNDER
Priority Date: 29 September 2003 :
Attorney's Docket No.: 06032 :
For: COMPOSITION FOR THE TREATMENT :
OF BAD BREATH : 37 CFR 1.137(b)

This decision is in response to applicant's "PETITION FOR REVIVAL OF AN APPLICATION ABANDONED UNINTENTIONALLY UNDER 37 C.F.R. 1.137(b)," filed on 08 May 2006. The required fee of \$65.00 (the surcharge under 1.492(h) for late filing of the executed declaration) has not been submitted.

BACKGROUND

On 29 September 2004, this international application was filed, claiming an earliest priority date of 29 September 2003.

The deadline for paying the basic national fee in the United States under 35 U.S.C. 371 and 37 CFR 1.495 was 29 March 2006. This international application became abandoned with respect to the United States at midnight on 29 March 2006 for failure to pay the required basic national fee.

On 08 May 2006, applicants filed the instant petition under 37 CFR 1.137(b) and Transmittal letter for entry into the national stage in the United States, which was accompanied by the basic national fee, executed declaration and the petition fee. However, the surcharge for late filing of the executed declaration was not submitted at such time.

DISCUSSION

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application; (2) the petition fee as set forth in § 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional

information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

Petitioner has provided: (1) the proper reply by submitting the basic national filing fee, (2) the petition fee set forth in § 1.17(m) and (3) the proper statement under 137(b)(3). In this application, no terminal disclaimer is required.

Accordingly, the petition is deemed to satisfy requirements (1), (2), (3), and (4) under 37 CFR 1.137(b).

DECISION

The petition under 37 CFR 1.137(b) is **GRANTED**.

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for continued processing

The executed declaration cannot be accepted at this time because the payment of the surcharge set forth in § 1.492(h) is required for acceptance of any of the search fee, the examination fee, or the oath or declaration of the inventor after the date of the commencement of the national stage (§ 1.491(a)). See 37 CFR 1.495(c)(3).



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